IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5616 OF 2005

The State of Maharashtra .... appellant

versus

Ashok Shankar Rupwate. & ors ... Respondent.

Smt. V.R.Bhosale APP for appellant
Shri A.G.Damle with J.H. Kagade for Respdt. 9.
Shri S.Pasbola for Respondents 1 to 6.
Shri C.B.Shirke for Respondents 12/13.

CORAM; V.G. PALSHIKAR Acg.C.J.&
SMT.NISHITA MHATRE,J.

DATED; 28TH AUGUST, 2006.

P.C.:

1. By this petition, the State seeks to impugn the order of acquittal recorded by the learned Sessions Judge, Bombay.

2. According to the prosecution on the date of Ganesh immersion on 2nd September 2001 there was substantial crowd and a rickshaw (two wheeler) was plying in that crowd. It dashed against a boy who suffered certain injuries and the people around the spot wanted the rickshaw driver to pay substantil sum of money for the purposes of treatment of that boy. Looking to the inefficiency of the rickshaw driver or inability to

pay, the people around him got enranged and thrashed him and as a result of which he died. Those around were prosecuted for offence under sections 143, 144, 147, 148, 149 read with 34, 149 read with 324 of IPC. The learned trial Judge on appreciation of evidence on record came to the conclusion that the prosecution has failed to prove any of the charges levelled by it against any of the accused persons and therefore acquitted all of them by the impugned order.

3. This order is questioned by this application on the ground that the appreciation of evidence is grossly improper, or no cogent or legal acceptable reasons were given for rejecting the testimony of eye witnesses. The nature and number of injury is not considered and therefore the order is purverse, requiring interference by this court in exercise of its appellate jurisdiction.

4. We have considered the impugned judgment. It is obvious that the entire incident occured on the spur of the moment and there is no adequate evidence whatsoever for application of section 149 to any of the accused persons. There is no evidence of making up minds, there is no evidence of preparation and merely because some of the accused persons were having knife with them, it cannot be said that they all acted in

furtherence of their common object of committing murder of the deceased or for that matter causing hurt to him. Eye witness account has been taken up for consideration by the learned trial Judge. But he has rejected the same as there were material lacunas in their statements. It is therefore a matter of appreciation of evidence and no purversity of the same is pointed out. Hence application for leave is rejected.

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